



DEPARTMENT OF TRANSPORTATION

[4910-EX-P]

Federal Motor Carrier Safety Administration

[Docket No. FMCSA-2013-0442; FMCSA-2013-0443; FMCSA-2013-0444; FMCSA-2013-0445; FMCSA-2014-0213; FMCSA-2014-0214; FMCSA-2014-0215; FMCSA-2014-0216; FMCSA-2014-0378; FMCSA-2014-0379; FMCSA-2014-0380; FMCSA-2014-0381; FMCSA-2014-0382]

Denial of Exemption Applications; Epilepsy and Seizure Disorders

AGENCY: Federal Motor Carrier Safety Administration (FMCSA), DOT.

ACTION: Notice of denial of applications for seizure exemptions.

SUMMARY: FMCSA announces the denial of 36 individuals' applications for exemptions from the rule prohibiting persons with a clinical diagnosis of epilepsy or any other condition that is likely to cause a loss of consciousness or any loss of ability to operate a commercial motor vehicle (CMV) from operating CMVs in interstate commerce. The reason for each of the denials is listed after the individual's name.

FOR FURTHER INFORMATION CONTACT: Charles A. Horan, III, Director, Office of Carrier, Driver and Vehicle Safety, (202) 366-4001, or via email at fmcsamedical@dot.gov, or by letter to FMCSA, Room W64-113, Department of Transportation, 1200 New Jersey Avenue, SE, Washington, DC 20590-0001. Office hours are from 8:30 a.m. to 5 p.m., Monday through Friday, except Federal holidays.

SUPPLEMENTARY INFORMATION:

Background

Under 49 U.S.C. 31315 and 31136(e), FMCSA may grant an exemption for a 2-year period if it finds "such exemption would likely achieve a level of safety that is equivalent to, or

greater than, the level that would be achieved absent such exemption.” The statutes allow the Agency to renew exemptions at the end of the 2-year period. The 36 individuals listed in this notice have requested an exemption from the epilepsy and seizure disorder standard in 49 CFR 391.41(b)(8), which applies to drivers who operate CMVs as defined in 49 CFR 390.5, in interstate commerce. Section 391.41(b)(8) states that a person is qualified physically to drive a CMV if that person has no established medical history or clinical diagnosis of epilepsy or any other condition which is likely to cause the loss of consciousness or any loss of ability to control a CMV.

In order to make an evidence-based decision, FMCSA conducted a comprehensive review of scientific literature and convened a panel of medical experts in the field of neurology to evaluate key questions regarding seizure and anti-seizure medication related to the safe operation of a CMV. Previously, the Agency gathered evidence for decision making concerning potential changes to the regulation by conducting a comprehensive review of scientific literature that was compiled into a report entitled, “Evidence Report on Seizure Disorders and Commercial Vehicle Driving” (Evidence Report) [CD-ROM HD TL230.3 .E95 2007]. The Agency then convened a MEP in the field of neurology on May 14-15, 2007, to review 49 CFR 391.41(b)(8) and the advisory criteria regarding individuals who have experienced a seizure and the 2007 Evidence Report. The Evidence Report and the MEP recommendations are published on-line at <http://www.fmcsa.dot.gov/rules-regulations/topics/mep/mep-reports.htm> under Seizure Disorders and are in the docket for this notice. In reaching the determination to grant or deny exemption requests for individuals who have experienced a seizure, the Agency considered both current medical literature and information and the 2007 recommendations of the Agency’s Medical Expert Panel (MEP).

MEP Criteria for Evaluation

On October 15, 2007, the MEP issued the following recommended criteria for evaluating whether an individual with epilepsy or a seizure disorder should be allowed to operate a CMV.¹ The MEP recommendations are included in an appendix at the end of this notice and in each of the previously published dockets.

Epilepsy diagnosis. If there is an epilepsy diagnosis, the applicant should be seizure-free for 8 years, on or off medication. If the individual is taking anti-seizure medication(s), the plan for medication should be stable for 2 years. Stable means no changes in medication, dosage, or frequency of medication administration. Recertification for drivers with an epilepsy diagnosis should be performed every year.

Single unprovoked seizure. If there is a single unprovoked seizure (i.e., there is no known trigger for the seizure), the individual should be seizure-free for 4 years, on or off medication. If the individual is taking anti-seizure medication(s), the plan for medication should be stable for 2 years. Stable means no changes in medication, dosage, or frequency of medication administration. Recertification for drivers with a single unprovoked seizure should be performed every 2 years.

Single provoked seizure. If there is a single provoked seizure (i.e., there is a known reason for the seizure), the Agency should consider specific criteria that fall into the following two categories: low-risk factors for recurrence and moderate-to-high risk factors for recurrence.

- Examples of low-risk factors for recurrence include seizures that were caused by a medication; by non-penetrating head injury with loss of consciousness less than or equal

¹ Engel, J., Fisher, R.S., Krauss, G.L., Krumholz, A., and Quigg, M.S., “Expert Panel Recommendations: Seizure Disorders and Commercial Motor Vehicle Driver Safety,” FMCSA, October 15, 2007.

to 30 minutes; by a brief loss of consciousness not likely to recur while driving; by metabolic derangement not likely to recur; or by alcohol or illicit drug withdrawal.

- Examples of moderate-to-high-risk factors for recurrence include seizures caused by non-penetrating head injury with loss of consciousness or amnesia greater than 30 minutes or penetrating head injury; intracerebral hemorrhage associated with a stroke or trauma; infections; intracranial hemorrhage; post-operative complications from brain surgery with significant brain hemorrhage; brain tumor; or stroke.

The MEP report indicates that individuals with moderate to high-risk conditions should not be certified. Drivers with a history of a single provoked seizure with low risk factors for recurrence should be recertified every year.

Medical Review Board Recommendations and Agency Decision

FMCSA presented the MEP's findings and the Evidence Report to the Medical Review Board (MRB) for consideration. The MRB reviewed and considered the 2007 "Seizure Disorders and Commercial Driver Safety" evidence report and the 2007 MEP recommendations. The MRB recommended maintaining the current advisory criteria, which provide that "drivers with a history of epilepsy/seizures off anti-seizure medication and seizure-free for 10 years may be qualified to drive a CMV in interstate commerce. Interstate drivers with a history of a single unprovoked seizure may be qualified to drive a CMV in interstate commerce if seizure-free and off anti-seizure medication for a 5 year period or more" [Advisory criteria to 49 CFR 391.43(f)].

The Agency acknowledges the MRB's position on the issue but believes current relevant medical evidence supports a less conservative approach. The medical advisory criteria for epilepsy and other seizure or loss of consciousness episodes was based on the 1988 "Conference

of Neurological Disorders and Commercial Driving” (NITS Accession No. PB89-158950/AS). A copy of the report can be found in the docket referenced in this notice.

The MRB’s recommendation treats all drivers who have experienced a seizure the same, regardless of individual medical conditions and circumstances. In addition, the recommendation to continue prohibiting drivers who are taking anti-seizure medication from operating a CMV in interstate commerce does not consider a driver’s actual seizure history and time since the last seizure. The Agency has decided to use the 2007 MEP recommendations as the basis for evaluating applications for an exemption from the seizure regulation on an individual, case-by-case basis. The disposition of applications announced in this notice applies the 2007 MEP recommendations.

Denials and Reasons

- *The following driver was listed previously in Federal Register Notice FMCSA–2013-0442 published on February 25, 2014:*

Bryan Puterbaugh – Mr. Puterbaugh has a history of epilepsy. His last seizure was in 2002. His anti-seizure medication was discontinued in 2008. He does not meet the MEP guidelines at this time.

- *The following driver was listed previously in Federal Register Notice FMCSA-2013-0443 published on March 21, 2014:*

Scott Smith – Mr. Smith has a history of seizure disorder. His last seizure was in 2002. His anti-seizure medication was discontinued 2012. He does not meet the MEP guidelines at this time.

- *The following driver was listed previously in Federal Register Notice FMCSA-2013-0444 published on May 13, 2014:*

Earnest Williams – Mr. Williams has a history of epilepsy. His last seizure was in 2001. His anti-seizure medication was discontinued in 2010. He does not meet the MEP guidelines at this time.

- *The following drivers were listed previously in Federal Register Notice FMCSA-2014-0213 published on August 12, 2014:*

Brian Brown – Mr. Brown has a history of seizure disorder. His last seizure was October 2008. He takes anti-seizure medication. He does not meet the MEP guidelines at this time.

Adam Schultz – Mr. Schultz has a history of epilepsy. His last seizure was November 2009. He takes anti-seizure medication. He does not meet the MEP guidelines at this time.

- *The following driver was listed previously in Federal Register Notice FMCSA-2014-0214 published on September 18, 2014:*

Michael LaPlante – Mr. LaPlante has a history of epilepsy. His last seizure was June 2011. He takes anti-seizure medication. He does not meet the MEP guidelines at this time.

- *The following drivers were listed previously in Federal Register Notice FMCSA-2014-0215 published on September 9, 2014:*

Brian Bose – Mr. Bose has a history of epilepsy secondary to a right frontal lobe meningioma which was resected in 1997 and again in 2014. He had a postoperative seizure in 2014. He does not meet the MEP guidelines at this time.

Aimee-Christine Bjornstad – Ms. Bjornstad has a history of epilepsy. Her last seizure was August 2008. She takes anti-seizure medication. She does not meet the MEP guidelines at this time.

Todd Riel – Mr. Riel has a history of seizure disorder. His last seizure was September 2011. He takes anti-seizure medication. He does not meet the MEP guidelines at this time.

Tory Shuler – Mr. Shuler has a history of seizure disorder. His last seizure was October 2012. He takes anti-seizure medication. He does not meet the MEP guidelines at this time.

- *The following driver was listed previously in Federal Register Notice FMCSA-2014-0216 published on October 1, 2014:*

David Allen Mitchell – Mr. Mitchell has a history of seizure disorder due to a frontal craniotomy aneurysm clipping. His last seizure was approximately four years ago. He takes anti-seizure medication. He does not meet the MEP guidelines at this time.

- *The following drivers were listed previously in Federal Register Notice FMCSA-2014-0378 published on October 27, 2014:*

Jason McKenna Sr. – Mr. McKenna has a history of seizure disorder. His last seizure was July 2010. He takes anti-seizure medication. He does not meet the MEP guidelines at this time.

Bobby Shane Walker – Mr. Walker has a history of seizure disorder. His last seizure was in 1990, however in 2014 he became suddenly incapacitated while driving and suffered a minor crash. He does not meet the MEP guidelines at this time.

- *The following drivers were listed previously in Federal Register Notice FMCSA-2014-0379 published on November 24, 2014:*

Keith Boelter – Mr. Boelter has a history of epilepsy. His last seizure was May 2014. He takes anti-seizure medication. He does not meet the MEP guidelines at this time.

Philip Canales, Jr. – Mr. Canales has a history of a seizure 30 years ago after a severe post traumatic brain injury. His doctor stated that in 2009 he suffered three brief spells in which he

felt funny. It is unclear if these three brief spells were seizures. He takes anti-seizure medication. He does not meet the MEP guidelines at this time.

Gerald Hodge – Mr. Hodge has a history of seizure disorder. His last seizure was in 2012. He takes anti-seizure medication. He does not meet the MEP guidelines at this time.

Donald Horst – Mr. Horst has a history of seizure disorder. His last seizure was July 2008. He takes anti-seizure medication. He does not meet the MEP guidelines at this time. ,

David Satchell – Mr. Satchell has a history of seizure disorder. His last seizure was September 2013. He takes anti-seizure medication. He does not meet the MEP guidelines at this time.

Eric Schams – Mr. Schams has a history of seizure disorder. His last seizure was September 2013. He takes anti-seizure medication. He does not meet the MEP guidelines at this time.

- *The following drivers were listed previously in Federal Register Notice FMCSA-2014-0380 published on January 22, 2015:*

Allen James Broll – Mr. Broll has a history of having two spontaneous subdural hematomas. He has no history of seizure. He takes anti-seizure medication as a prophylactic measure. He does not meet the MEP guidelines at this time.

Mark A. Grafton – Mr. Grafton has a history of a seizure in 2014, secondary to a stroke. He takes anti-seizure medication. He does not meet the MEP guidelines at this time.

Zachary Kyle Griffin – Mr. Griffin has a history of post-traumatic seizure disorder. His last seizure was 2009. He takes anti-seizure medication. He does not meet the MEP guidelines at this time.

Matthew M. Lohman – Mr. Lohman has a history of seizures. His last seizure was in 2011. He takes anti-seizure medication. He does not meet the MEP guidelines at this time.

Nicholas Blake Malott – Mr. Malott has a history of a seizure disorder. His last seizure was in 2014. He takes anti-seizure medication. He does not meet the MEP guidelines at this time.

Kevin W. Mathis – Mr. Mathis has a history of epilepsy. His last seizure was in 2012. He takes anti-seizure medication. He does not meet the MEP guidelines at this time.

Jason R. McKenzie – Mr. McKenzie has a history of seizures. His last seizure was in 2012. He takes anti-seizure medication. He does not meet the MEP guidelines at this time.

Steven R. Plummer – Mr. Plummer has a history of a movement disorder with symptoms of unsteadiness and muscle twitching. He has no history of seizure. He takes anti-seizure medication for his movement disorder. He does not meet the MEP guidelines at this time.

Clinton James Howard Sheller – Mr. Sheller has a history of a seizure disorder. His last seizure was in 2010. He takes anti-seizure medication. He does not meet the MEP guidelines at this time.

- *The following drivers were listed previously in Federal Register Notice FMCSA-2014-0381 published on February 4, 2015.*

Bryant Justin Carter – Mr. Carter has a history of seizure. His last seizure was in 2012. He does not take anti-seizure medication. He does not meet the MEP guidelines at this time.

Richard A. Frazier, Jr. – Mr. Frazier has a history of an episode of loss of consciousness in 2013. He takes anti-seizure medication. He does not meet the MEP guidelines at this time.

Emanuel Villegas – Mr. Villegas has a history of seizures. His last seizure was in 2013. He takes anti-seizure medication. He does not meet the MEP guidelines at this time.

- *The following drivers were listed previously in Federal Register Notice FMCSA-2014-0382 published on April 13, 2015.*

Cody A. Baker – Mr. Baker has a history of a seizure disorder. His last seizure was in 2010. He takes anti-seizure medication. He does not meet the MEP guidelines at this time.

Glenn M. Gervais – Mr. Gervais has a history of a seizure disorder. His last seizure was in 2011. He takes anti-seizure medication. He does not meet the MEP guidelines at this time.

Robert I. Keene, Jr. – Mr. Keene has a history of a seizure disorder. His last seizure was in 2012. He takes anti-seizure medication. He does not meet the MEP guidelines at this time.

Larry T. Lintelman – Mr. Lintelman has a history of a seizure disorder. His last seizure was in 2011. He takes anti-seizure medication. He does not meet the MEP guidelines at this time.

Robert R. Rosebrough, Jr. – Mr. Rosebrough has a history of epilepsy. His last seizure was in 2014. He takes anti-seizure medication. He does not meet the MEP guidelines at this time.

Issued on: May 22, 2015

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Associate Administrator for Policy
[FR Doc. 2015-13657 Filed: 6/3/2015 08:45 am;
Publication Date: 6/4/2015]